

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: COASTAL HOUSING PROGRAM
POLICY NO.: 600-03
EFFECTIVE DATE: July 5, 1994

BACKGROUND:

The California Coastal Act of 1976 included as legislative policy that “housing opportunities for persons of low and moderate income shall be protected, encouraged and where feasible provided...” This language led the California Coastal Commission to adopt guidelines and regulations which required that a portion of new residential developments in the Coastal Zone be affordable by low- and/or moderate-income households. The Coastal Commission also promulgated regulations dealing with the demolition and conversion of existing low-moderate-income residential units which mandated the provision of affordable housing opportunities. These Coastal Commission regulations generated substantial controversy.

In 1981, the California Legislature adopted Senate Bill 626 (Chapter 1007, Statutes of 1981), which substantially altered the regulatory scheme regarding residential development in the Coastal Zone. This new statute amended the California Coastal Act to limit the jurisdiction of the Coastal Commission to matters of physical development. In place of the housing regulations of the Coastal Commission the statute created new responsibilities for local agencies. This policy is adopted to provide stability in the coastal development process and clearly delineate the procedures to be used in the City of San Diego in implementing these new housing responsibilities and at the same time provide the broadest range of options for developers.

PURPOSE:

To establish procedures to be used to implement the requirements of Article 10.7, “Low- and Moderate-Income Housing within the Coastal Zone,” of Chapter 3 of Division 7 of Title 7 of the Government Code.

POLICY:

It shall be the policy of the City Council that within the Coastal Zone, as established by the California Coastal Act of 1976, as amended, the conversion or demolition of existing dwelling units occupied by persons and families of low-or moderate-income (as defined in California Government Code Section 65590(b)) shall not be authorized unless and until provision has been made for replacement of those dwelling units with units affordable by persons and families of low-or moderate-income. New housing development projects located within the Coastal Zone shall, where feasible, provide dwelling units affordable by persons and families of low- or moderate-income.

Replacement and/or development of new dwelling units affordable by persons or families of low- or moderate-income may, at the project applicant’s option, be provided for through the provision of new housing opportunities or through contribution of the Low- Moderate-Income Coastal Housing Fund.

IMPLEMENTATION PROCEDURES:

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- A. This policy shall not apply to the following projects:
1. Projects not located within the Coastal Zone.
 2. The conversion or demolition of a residential structure which contains less than three dwelling units, or where more than one residential structure is involved, the conversion or demolition of ten or fewer dwelling units.
 3. The conversion or demolition of a residential structure for purposes of a non-residential use which is “coastal dependent” or “coastal related,” as defined in the California Coastal Act of 1976, as amended, which non-residential use is consistent with the applicable community land use plan.
 4. The demolition of a residential structure which has been declared a public nuisance.
- B. Standards for determining residents’ qualification as low- and moderate-income, and low- and moderate-income affordability shall be those of the City of San Diego Progress Guide and General Plan Housing Element.
- C. In order to provide the maximum opportunity to developers of housing projects within the Coastal Zone, the following incentives shall be provided:
1. The provisions of the Affordable Housing Density Bonus Ordinance shall be made available to projects involving conversions and demolitions in the same manner as those provisions apply to new developments. Where existing housing units remain on the project site, those units shall be subtracted from the total number of units permitted under the terms of the Affordable Housing Density Bonus Ordinance to determine the number of units which may be transferred to another project.
 2. A right to develop housing units which is transferable from one site to another under the terms of the Affordable Housing Density Bonus ordinance may be transferred from one person to another, subject to the restrictions imposed by that ordinance and this policy regarding the affordability of those units when constructed. Transfer of development rights may be accomplished by either agreement of the parties and the Housing Commission pursuant to the provisions of the Affordable Housing Density Bonus Ordinance or agreement of the Housing Commission and a coastal developer pursuant to this policy.
 3. Priority processing of all permit applications and inspections required for development of any project providing affordable housing developed pursuant to this policy.
 4. Direct and indirect public subsidy of affordable housing units, subject to availability of funding.
 5. The regulation controlling utilization of development incentive programs such as density bonuses or financial subsidies shall prevail if in conflict with the provisions of this policy where those regulations are more restrictive.

- D. In the case of conversion or demolition of residential structures located within the Coastal Zone, the procedures listed below shall be followed:
1. Application shall be made to the Development Services Department in the case of conversion from rental to condominium, cooperative or similar form of ownership; or application shall be made to the Development Services Department in the case of conversion from residential to nonresidential use or demolition.
 2. The city agency receiving the application shall determine whether the proposed project is exempt from this policy pursuant to Section A, above.
 3. If the project is not exempt from the requirements of this policy, the city agency receiving the application shall inform the applicant of the requirements of this policy and refer the application to the Housing Commission for determination of how this policy applies to the project.
 4. The Housing Commission shall determine within 45 days after receipt of the application whether the dwelling units to be converted or demolished are occupied by persons or families of low- or moderate-income. This determination may be based upon a survey of current residents. Information on tenant income shall be provided under penalty of perjury and shall report income from all sources, including a reasonable return upon tenant assets. A dwelling unit need to be replaced if (i) it is not occupied by persons or families of low- or moderate-income or (ii) resident income survey relating thereto is not received from the resident within 30 days after the survey mailing date.
 5. The Housing Commission shall determine the feasibility of including the replacement dwelling units affordable by persons or families of low- or moderate-income within the Coastal Zone.
 6. Where converted or demolished dwelling units are required to be replaced, the replacement units shall meet the following standards:
 - a. Replacement units shall provide affordable housing opportunities to previously available , through (i) new construction, (ii) conversion of nonresidential structures to residential use, (iii) substantial rehabilitation of dilapidated dwelling units, (iv) existing units not currently affordable by low- or moderate-income households, or (v) any combination of the above.
 - b. Replacement units shall provide housing opportunities similar to those provided by the dwelling units converted or demolished. The number of replacement units shall be equal to the number of dwelling units proposed for conversion or demolition which are occupied by persons or families of low- or moderate-income. Replacement units need not be identical to those converted or demolished but shall have the same general characteristics and shall be acceptable by the Executive Director of the Housing Commission.
 - c. Replacement units shall be provided and available for occupancy within three years from the date upon which work commenced on the conversion or demolition. "Work

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commenced,” with respect to a converted unit, shall be the offering of said unit for sale to the public. “Work commenced,” with respect to a demolished unit shall be substantial completion of physical demolition.

- d. Replacement units shall be located on the site of the converted or demolished structure or elsewhere within the Coastal Zone if feasible, or, if location on the site or elsewhere within the Coastal Zone is not feasible, they shall be located within three miles of the Coastal Zone, except that they shall not be located outside the Coastal Zone within any census tract impacted by an over-concentration of persons and families of low-income.
7. The Housing Commission shall, based upon the number and characteristics of the dwelling units occupied by low- moderate-income persons or families, inform the applicant of:
- a. The total number of replacement dwelling units which must be provided.
 - b. The characteristics which the replacement units must provide, as determined pursuant to Paragraph 6, above.
 - c. The alternative option of contributing to the Low- and Moderate-Income Coastal Housing Fund in lieu of providing the required replacement units, and the amount of that in lieu contribution, as provided by Section G, below.
- E. In the case of new housing developments proposed within the Coastal Zone, the procedures listed below shall be followed:
- 1. Application for discretionary development permits shall be filed with the appropriate city agency. Where only ministerial permits issued by the Development Services Department are required, application shall be filed with that agency.
 - 2. The city agency receiving the application shall determine whether the proposed project is exempt from this policy pursuant to Section A, above. When applications are filed with more than one agency simultaneously, the determination shall be made by the agency with jurisdiction over the first permit to be issued.
 - 3. If the project is not exempt from the requirements of this policy the city agency receiving the application shall inform the applicant of the requirements of this policy and refer the application to the Housing Commission for determination of how this policy applies to the project.
 - 4. The Housing Commission shall determine the feasibility of including dwelling units affordable by persons or families of low- or moderate-income within the project on the project site.

If it is not feasible to provide low-moderate-income affordable housing on the project site, the Housing Commission shall determine whether it is feasible to provide such housing at another location within the Coastal Zone, or within three miles of the Coastal Zone boundary;

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provided, however, that such location shall be within the same community planning area in which the project site is located.

5. Where it is determined that provision of housing units affordable by low-moderate-income is feasible, the Housing Commission shall inform the applicant of:
 - a. The total number of affordable units which shall be provided. In no case shall the number of affordable units required constitute more than 20 percent of total project.
 - b. The characteristics which the affordable units shall provide, including, but not limited to, number of bedrooms, tenure type, income range.
 - c. The alternative option of contributing to the Low- Moderate-Income Coastal Housing Fund in lieu of providing the required affordable units, and the amount of that in lieu fee, as provided by Section G, below.
 6. In evaluating the feasibility of providing affordable units as part of a new housing development, the Housing Commission shall consider the economic, social, technical and environmental effects of providing affordable units.
- F. Where a proposed development is required to provide housing units affordable be persons and families of low- or moderate-income and the developer chooses to provide those units, the developer shall enter into an agreement with the Executive Director of the Housing Commission. The agreement shall include the following provisions:
1. A description of the coastal development project, including its location, the number of units to be developed, etc.
 2. A description of the affordable housing units to be provided, including their size and location.
 3. A description of the method to be used to insure the affordability of the housing units by low- or moderate-income households for the period set forth below, including the rent or estimated monthly housing cost, and in the case of sale units, the techniques to be used to limit future resales. Said period shall be five years (or longer, at the option of the developer).
- The agreement shall be recorded and, as to the provisions regarding the development of affordable housing units, shall be and encumbrance upon the developer's project until such provisions are satisfied.
- G. Developers of housing developments within the Coastal Zone for which affordable units must be provided may, in lieu of providing those units, as the Housing Commission elects, either (i) contribute to the Low- Moderate-Income Coastal Housing Fund or (ii) purchase credits from the Housing Commission's Bank of Low- or Moderate-Income Coastal Units. The amount of the contribution shall be determined by the Executive Director of the Housing Commission in accordance with guidelines established by the Housing Commission. The amount may consist of cash or real property acceptable to the Executive Director of the Housing Commission.

A developer who chooses to pay said amount in lieu of providing affordable housing units shall enter into an agreement with the Executive Director of the Housing Commission. The agreement shall include the following provisions:

1. A description of the contribution and the manner in which that contribution shall be conveyed.
2. That the Housing Commission shall develop, and make available as soon as feasible, the number and type of affordable housing units which the developer would otherwise have been required to provide.
3. That the developer transfers to the Housing Commission the Affordable Housing Density Bonus units available pursuant to Section 101.0307 of the Municipal Code and not utilized by the developer. Such units may be used by the housing Commission in meeting their responsibilities under this policy.

The agreement shall be recorded and, as to the provisions regarding the contribution shall be an encumbrance upon the developer's project until such provisions are satisfied.

In the case of conversion where the developer chooses to make contribution of cash, the contribution shall be due upon commencement of sales of housing units converted to residential ownership status or upon approval of the final permits for change of use to non-residential use. In the case of demolition where the developer chooses to make contribution of cash, the contribution shall be due upon completion of the demolition.

In the case of new "for sale" housing developments where the developer chooses to make a contribution of cash, the contribution shall be payable upon close of escrow for each housing unit in the developer's project. In the case of new rental housing developments where the developer chooses to make a contribution of cash, the contribution shall be payable prior to occupancy by any tenant. Any contribution not consisting of cash must be conveyed in full and vest in the Housing Commission no later than 12 months after the date upon which work commences on the developer's project.

- H. The Housing Commission shall determine the reasonable fees to be paid by developers for the cost incurred by the Housing Commission in connection with applications filed hereunder.
- I. Determinations of the Housing Commission pursuant to this policy shall be final on the seventh day following action by the Housing Commission unless a request to be heard on appeal is filed in the office of the City Clerk.

When a request to be heard on appeal is filed with the City Clerk, it shall be placed on the Council docket for the limited purpose of determining whether the City Council will hear the appeal. The City Council will accept an appeal for hearing when any of the following situations are found to exist:

1. The appellant was denied the opportunity to make a full and complete presentation to the Housing Commission.

2. New evidence is now available that was not available at the time of the Housing Commission hearing.
3. The Housing Commission determination was arbitrary because no evidence was presented to the Housing Commission that supports the determination.
4. The Housing Commission determination was in conflict with adopted Council Policy or the Municipal Code.

The City Council shall rely upon the record of the proceedings before the Housing Commission and the written appeal. No oral presentations shall be made to the City Council by proponents or opponents of the determination. A vote on a motion to set the appeal for hearing shall not constitute a vote in favor of hearing the appeal, the City Clerk shall set the appeal for hearing before the City Council and give notice of the appeal in the manner required by the Municipal Code.

- J. If any provision or part of this policy or the application thereof to any person, property or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or parts or applications of this policy which can be given effect without the invalid provision, part or application and, to this end, the provisions and parts of this ordinance are declared to be severable.

HISTORY:

(“Billboards on City-owned Lands”

Adopted by Resolution R-169961 03/15/1962

Repealed by Resolution R-212290 12/26/1974

“Coastal Housing Program”

Adopted by Resolution R-256574 06/14/1982

Amended by Resolution R-284237 07/05/1994